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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,167	07/30/2003	Gideon Eden	09672.0051	7641

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EXAMINER	
BEISNER, WILLIAM H	

ART UNIT	PAPER NUMBER
1744	

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/630,167	EDEN, GIDEON	
	Examiner	Art Unit	
	William H. Beisner	1744.	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2005 and 21 December 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/16/05 and 12/21/05 have been entered.

Specification

2. The disclosure is objected to because of the following informalities: The specification should not refer to the sole figure as "Figure 1" (Note applicant's previous correction to the drawing figure).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Pautz (DE 19817715).

With respect to claim 1, the reference of Pautz discloses a device that is structurally the same as that instantly claimed. The device includes a container (1) containing liquid media (7) capable of growing microorganisms (See page 5, 2nd full paragraph; page 7, 1st paragraph; and page 8, 2nd paragraph, of the English language translation). The device also includes an air pump for contacting an air sample with the media (7) and submicron filter (See page 8, 1st paragraph, of the English language translation).

With respect to claim 2, the air pump is draws a vacuum (See page 8, 1st paragraph, of the English language translation).

With respect to claim 11, in the absence of further positively recited structure that would distinguish the container (1) of Pautz over the instantly claimed container, the container (1) of Pautz is capable of being disposed of and is considered to meet the instant claim language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley (US 6,550,347) in view of Pautz (DE 19817715).

The reference of Bradley discloses a device (10) for collecting airborne microorganisms. The device includes a container (14) containing an entrapment liquid (44) and an air pump (See column 2, line 64, to column 3, line 2, and column 4, line 39) for transferring an air sample with the microorganisms through the entrapment liquid.

With respect to claim 1, while the reference of Bradley discloses the capture and detection of microorganisms, the reference recites that the entrapment liquid is removed form the container for subsequent testing (See column 8, lines 25-39). The reference is silent as to the use of a culture liquid as the entrapment liquid.

The reference of Pautz discloses that it is known in the art to provide a capture device for microorganisms with a culture medium so that microorganisms can be detected without being removed from the capture device (See page 5, 2nd full paragraph; page 7, 1st paragraph; and page 8, 2nd paragraph, of the English language translation).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an entrapment liquid in the device of the references of Bradley that is also an enrichment medium for the collected sample as suggested by the reference of Pautz. Use of a culture medium as the entrapment liquid would avoid the delay associated with a subsequent transfer of the sample for further culturing and analysis as done in the reference of Bradley.

With respect to the "submicron filter" recited in claim 1 "to prevent liquid and solid particulate matter from passing beyond the filter and contaminating the air pump", the reference of Bradley discloses the use of filter (24) for preventing water droplets with entrained particles, contaminants, or air components from exiting the container through outlet (22) (See column 8, lines 9-25).

The reference of Pautz discloses that it is known in the art to employ a submicron filter to prevent microorganisms from leaving the collection device (See page 8, 1st paragraph, of the English language translation).

As a result, it would have been obvious to one of ordinary skill in the art to determine the optimum filter pore size, including "sub-micron" pores, based merely on the size of the particles intended to be collected and prevented from exiting the collection system and/or the filter material properties while maintaining the function of preventing water droplets with entrained particles, contaminants, or air components from exiting the container through outlet (22).

With respect to claim 2, the reference of Bradley discloses the use of a vacuum pump (See column 2, line 64, to column 3, line 2, and column 4, line 39).

With respect to claim 3, the use of a pressure pump as opposed to an air pump would have been obvious to one of ordinary skill in the art for the known and expected result of providing an alternative means recognized in the art for generating the required air flow in the sampling device.

With respect to claims 4-9, the reference of Pautz discloses the use of culture medium that allows for the detection of microorganism presence within the sampling container (See page 7, 1st and 2nd full paragraphs, of the English language translation). The specifics of the culture

medium and detecting agents employed would have obvious to one of ordinary skill in the art at the time the invention was made based merely on the specifics of the microorganism to be detected.

With respect to claim 10, anthrax is a notoriously well-known airborne microorganism and thus would have been well within the purview of one of ordinary skill to detect this microorganism using known culture medium and detection reagents capable of indicating the presence of anthrax in the sampled air.

With respect to claim 11, in the absence of further positively recited structure that would distinguish the container (14) of Bradley over the instantly claimed container, the container (14) of Bradley is capable of being disposed of and is considered to meet the instant claim language.

8. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley (US 6,550,347) in view of Pautz (DE 19817715) taken further in view of Hakalehto (WO 9923243).

The combination of the references of Bradley and Pautz has been discussed above.

With respect to claims 4-9, while the reference of Pautz discloses the use of an enrichment medium and detection of microorganisms, the reference is not clear whether the detection steps include a substance that detects microbial growth.

The reference of Hakalehto discloses the use of culture medium that allows for optical detection of microorganism presence within the sampling container (See page 6, lines 16-22). The specifics of the culture medium and detecting agents employed would have obvious to one of ordinary skill in the art at the time the invention was made based merely on the specifics of the microorganism to be detected.

With respect to claim 10, anthrax is a notoriously well-known airborne microorganism and thus would have been well within the purview of one of ordinary skill to detect this microorganism using known culture medium and detection reagents capable of indicating the presence of anthrax in the sampled air.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pautz (DE 19817715).

The reference of Pautz has been discussed in the 35 USC 102 rejection above.

With respect to claim 3, while the reference discloses the use of a device for drawing a vacuum, claim 3 requires the use of a pressure pump for generating a flow in the device.

However, the use of a pressure pump as opposed to an air pump would have been obvious to one of ordinary skill in the art for the known and expected result of providing an alternative means recognized in the art for generating the required airflow in the sampling device.

10. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pautz (DE 19817715) in view of Hakalehto (WO 9923243).

The reference of Pautz has been discussed in the 35 USC 102 rejection above.

With respect to claims 4-9, while the reference of Pautz discloses the use of an enrichment medium and detection of microorganisms, the reference is not clear whether the detection steps include a substance that detects microbial growth.

The reference of Hakalehto discloses the use of culture medium that allows for optical detection of microorganism presence within the sampling container (See page 6, lines 16-22). The specifics of the culture medium and detecting agents employed would have obvious to one of ordinary skill in the art at the time the invention was made based merely on the specifics of the microorganism to be detected.

With respect to claim 10, anthrax is a notoriously well-known airborne microorganism and thus would have been well within the purview of one of ordinary skill to detect this microorganism using known culture medium and detection reagents capable of indicating the presence of anthrax in the sampled air.

Response to Arguments

11. With respect to the rejection of Claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Bradley (US 6,550,347) in view of Hakalehto (WO 9923243), this rejection has been withdrawn in view of Applicant's comments (See pages 5-7 of the response filed 9/16/2006). However, new grounds of rejection have been made over the reference of Pautz (DE 19817715) under 35 USC 102(b) and the combination of the references of Bradley (US 6,550,347) and Pautz (DE 19817715) under 35 USC 103.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William H. Beisner
Primary Examiner
Art Unit 1744

WHB